(4)

2

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

CR.A.No. 299 /07 (S.B.)

APPELLANT Manihar S/o Shivprasad

In Jail About 51years Village – Bhothali, P.S.- Anda Distt.- Durg (C.G.)

(1844/07 19/4/07 Filed on ... by Shri Vivek Ra Rao ... advocate 19/4/07)

VERSUS

RESPONDENT : State of Chhattisgarh
Through :- D.M.-Durg (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CRIMINAL PROCEDURE CODE

XIII-C-32

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

20

आदेश पत्रक

मामला क्रमांक C.A.No.299/2007 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT — Manihar, S/o Shivprasad, about 51 years, village Bhothali, P.S. Anda Distt. Durg (CG)

Vs.

RESPONDENT — State of Chhattisgarh, through D.M., Durg (CG)

14-9-2007

Shri Vivek Pandey, Advocate for the appellant.

Shri Sandeep Yadav, Dy. Govt. Advocate for the State.

This revision is directed against the judgment of conviction and order of sentence dated 29-11-2006 passed in S.T. No. 41/2006 whereby the learned 2nd Additional Sessions Judge, Durg has convicted the appellant under Section 304 Part-II, of I.P.C. and sentenced him to undergo S.I. for 3 years.

Case of the prosecution is that deceased Tamlal was a notorious son of the appellant. He used to quarrel with his family members including the accused appellant. On the date of incident, at about 10.00 a.m. he was quarreling with his brother Mukesh and chased to beat him. The appellant tried to intervene and on being unsuccessful, he picked up a rafter lying nearby and started assaulting him. When the rafter broke down, he picked up an iron frying pan and assaulted him, as a result of which the deceased sustained in all 17 injuries over his person as described in para 5 of the judgment and died on the spot. Report was lodged by P.W. 1 Hinchharam Sahu vide Ex. P-8. The dead body of the deceased Tamlal was sent for post mortem where Dr. B.N. Devangan (P.W. 6) conducted post mortem and submitted his report of Ex. P-9 and noticed 17 injuries over the person of the deceased including two fracture injuries over right parietal bone and frontal bone and two fracture injuries over right and left jaw of the deceased.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

27

आदेश पत्रक

Cr. A. No. 299/2007

मामला क्रमांक ..... सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Conviction of the appellant is based on his extra judicial confession before P.W. 1 Hinchharam Sahu and P.W. 4 Raghunath. P.W. 1 Hinchharam Sahu has stated that the accused resides in the same lane where he resides. Tamlal died in his own home where the appellant, his wife and his son Mukesh also reside. On the date of incident, the appellant confessed before him in presence of Sukhiya Bai that he has murdered his elder son Tamlal and asked him to accompany him to police station whereupon he went along with the accused on his motorcycle to police station who surrendered before the police. After returning home, he went to the house of the accused and saw the dead body of Tamlal lying drenched with blood. Similar is the statement of P.W. 4 Raghunath. The trial Court considering the statement of P.W. 1 Hinchharam and P.W. 4 Raghunath to be reliable and trustworthy and further considering that the appellant has admitted this fact in his statement under Section 313 of Cr.P.C., has held the appellant guilty of causing death of Tamlal however, taking into consideration that the incident occurred on a spur of moment without premeditation, instead of convicting the appellant under Section 302, I.P.C. has convicted him under Section 304 Part II of I.P.C. and sentenced to undergo S.I. for three years.

Learned counsel for the appellant fairly submits that he is not pressing the appeal against the conviction of the appellant under Section 304 Part-II, I.P.C. however he submits that taking into consideration that the appellant is the first offender, therefore he should be extended benefit of Section 4 of the Probation of Offenders Act.

On the other hand, learned counsel for the State submits that the deceased sustained 17 grievous injuries over his person including 4 fracture injuries on vital part of body i.e. head and jaw. The injuries present over the person of the deceased

XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(28)

आदेश पत्रक

मामला क्रमांक Cr.A 299/07 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

clearly establishes the intention and brutality of the appellant and in these circumstances, the jail sentence of three years S.I. imposed upon him cannot be termed to be excessive.

I have heard learned counsel for the parties.

After going through the injuries mentioned in the post mortem report of the deceased and also considering that the above injuries were inflicted by the father to his own son, I am of the considered opinion that no interference is called for in the impugned order whereby the appellant has been sentenced to undergo S.I. for three years.

The appeal being devoid of substance is liable to be and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

P/1